IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 365 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PRAVINSINH RANUBHA GARASIA

Appearance:

MR A.J. DESAI, APP, for Appellant
MR AD SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 17/09/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. The judgment and order recorded by learned Additional Sessions Judge, Bhavnagar, in Sessions Case No.121 of 1985 on 2nd March, 1991, recording acquittal of the accused person-respondent herein, who was charged under Sections 337, 333 and 506(2) of Indian Penal Code and Section 135 of Bombay Police Act, is the subject of challenge in this appeal.

2. The incident occurred on 25th June, 1985 at about 16.30 hours in the Police M.T. Garage of "C" Division Police, Bhavnagar. P.S.I. Bharatkumar Balkrishna Bhatt, who was serving in that section was inspecting a vehicle when the accused-respondent assaulted him with a knife. The accused is alleged to have given one knife blow on left hand, another knife blow on chest and the third blow while he was inflicting, the victim P.S.I. Bhatt raised his hand in defence which caused injury on the little finger of his left hand. The victim P.S.I. Bhatt, therefore, went to "C" Division for informing his superiors and lodging First Information Report. The injured was taken to the hospital and was given treatment. On the basis of the information received by the P.S.O., Investigating Officer was deputed, who recorded the information as given by the injured P.S.I. Bhatt. The offence was registered and investigated upon by the police. After collecting the evidence, a charge sheet was filed against the accused-respondent before the learned Judicial Magistrate, Bhavnagar, who committed the case to the Court of Sessions as the offences with which the accused was charged were triable only by the Court of Sessions. The learned Sessions Judge, Bhavnagar, in turn, transferred the matter to the Court of learned Additional Judge under Section 209 of the Code of Criminal Procedure. The accused pleaded not guilty to the charge against him and expressed his desire to face the trial. After the evidence was recorded, the learned Additional Sessions Judge came to a conclusion that the evidence led by the prosecution was not beyond the shadow of doubt and he, therefore, acquitted the accused of the charges by the impugned judgment order. State of Gujarat has, therefore, preferred this appeal challenging the judgment and order.

3. Mr. A.J. Desai, learned Additional Public Prosecutor appearing for the appellant State has assailed the judgment and order on the ground that the learned trial Judge has not evaluated the evidence in its proper perspective. The deposition of eye-witnesses is wrongly not believed. The so called defects in the prosecution case are not such as would adversely affect the prosecution case. The eye-witnesses and the injured both deposed to the guilt of the accused. The F.S.L. report indicates that the blood group found on the cloth of the victim and the accused is the same and, therefore, this corroboration besides the corroboration lent to the eye-witnesses by medical evidence could not have been ignored by the learned trial Judge. Mr. Desai, therefore, urged that the appeal may be allowed, the

acquittal may be set aside and the accused be convicted for the offences that he is charged with.

4. Mr. A.D. Shah, learned advocate appearing for the respondent, submitted that the prosecution evidence has to be viewed as a whole and the learned trial Judge has rightly taken into consideration all the aspects of the prosecution case including the serious infirmities in the investigation reflecting either gross inefficiency or bias on the part of the investigating agency. Mr. Shah submitted that, if the medical evidence is seen, it indicates simple injuries. In spite of that, the accused is charge sheeted for offences punishable under Sections 307 and 333 of Indian Penal Code. This reflects bias against the accused of the investigating agency. Mr. Shah then submitted that although according to the prosecution case, the accused was apprehended on the spot, his arrest is shown on the next day and that too with a knife in his hand. Could it be believed that an accused under police surveillance would continue or be permitted to continue to be in possession of a knife used in commission of an offence and carrying blood stains? Mr. Shah then submitted that there are contradictory versions emerging about the recording of F.I.R. Whether the complainant gave a written complaint or it was written down by the Police Officer recording the same is a matter of doubt. In any case, it adversely affects the trustworthiness of the investigation. Mr. Shah then submitted that the complainant has not disclosed the name of the assailant before the Medical Officer. Yadi which is sent is also silent about the name of the assailant. This also indicates a suspicious circumstance against the prosecution. Mr. Shah, therefore, submitted that, if all these aspects are taken into consideration collectively, it would not be proper to interfere with the judgment and order of the learned Additional Sessions Judge recording acquittal of the accused as the judgment cannot be considered as patently illegal or erroneous. He, therefore, submitted that the appeal may be dismissed.

5. Strange it is, that a Police Officer of the rank of P.S.I. is assailed upon by another policeman in presence of several other policemen in a premises under the governance of police! It really calls for a serious consideration and alarm. All the same, the evidence as led by the prosecution and read by the learned Additional Sessions Judge is the matter under consideration before this Court, at present.

6. Apparently, there are four eye-witnesses to the

incident, of which one is the victim-complainantP.S.I.-Bhatt. At the first reading of the evidence of these witnesses, though illusive, an impression is created that the prosecution case is properly established, although on a close scrutiny, it is abundantly clear that the prosecution case, taken as a whole, cannot hold the ground.

7. As per the prosecution, the incident has taken place at about 16.30 hours on 25th June, 1985. The accused himself is a police employee. As such, there is no dispute about his identity. The motive that is tried to be attributed for the accused to commit an assault on the victim P.S.I.-Bhatt is that, earlier, P.S.I.-Bhatt had made certain reports against him departmentally and was instrumental in prosecuting the accused for an offence under the Bombay Prohibition Act.

8. Admittedly, when the incident occurred, eye witnesses, who are police personnel, were present. Yet nobody has rescued the victim. After three blows were given, as alleged, the victim and the accused are taken to "C" Division office of Bhavnagar Police, where the victim P.S.I.-Bhatt requested the man in-charge to inform the Inspector or the D.S.P. about the incident. Thereupon, information was sent on wireless regarding the incident, whereafter the victim was taken to the hospital. Now, if we see the wireless message that is sent to the D.S.P., pursuant to the information given by the victim, which is produced on record at Ex.18, it speaks of assault upon P.S.I.-Bhatt. It does not reveal the name of the assailant although, according to P.S.I.-Bhatt, he did give name of the assailant to that man, i.e, the man in-charge. After the victim was taken to the hospital, he gave the history of how the incident had occurred. That part is covered in deposition of Dr. Hasmukh Kantilal, Ex.10. He says that P.S.I.-Bhatt was brought to him following a quarrel - fight. During cross-examination, he states that he had inquired from the patient as to how he sustained injuries and had recorded the same in the certificate issued by him. After examining the patient, he had informed the police as well. The certificate issued by the doctor is produced at Ex.11, which speaks of history of assault by somebody. Therefore, here also, name of the assailant is absent.

8.1 Further, the above aspect also assumes greater importance from the fact that although according to the eye-witnesses - Mahipatsinh Sardarsinh, Ex.32, Mahavirsinh Danubha, Ex.33 and Bhurubha Anubha, Ex.25,

the assailant-accused was apprehended immediately and was taken to "C" Division along with the victim, still the arrest of the accused is shown on the next day, i.e. on 26th June, 1985, between 19.05 and 19.30 hours and no explanation is coming forward in this regard. If the assailant was apprehended by the witnesses who are themselves police personnel and if the F.I.R. is given by a Senior Police Officer of the rank of P.S.I., what prevented the Investigating Officer from arresting an already apprehended or detained assailant is not explained by the prosecution although it is amply clear from the Panchnama, Ex.27, that the arrest was made on 26th June, 1985 between 19.05 and 19.30 hours. This itself is a doubtful circumstance. Apart from this, there is another doubtful circumstance that emerges from the record of the case is from the deposition of Investigating Officer, P.I.-Devidas Mangaji Salve, examined at Ex.49. If his deposition is seen, he says that on 25th June, 1985, he went to the place, drew the Panchnama, recovered the cloths of the victim and, after he completed the Panchnama of the place of offence at 19.00 hours, he arrested the accused by drawing a Panchnama in presence of Mahesh Dinkarrai Vyas and Mehboob Mohmadhusein Ghanchi and completed the same at 19.30 hours. Thus, according to the P.I., the accused was apprehended on 25th June, 1985 itself and not on 26th June, 1985, as indicated in the Panchnama. The Panchnama, therefore, becomes doubtful, so also the arrest of the accused. It is also to be noted that neither of the Panch of the Panchnama of arrest of the accused, namely, Mahesh Dinkarrai Vyas or Mehboob Mohmadhusein Ghanchi, is examined as witness. The arrest, therefore, becomes doubtful. Another aspect that requires consideration is the recording of F.I.R. The complainant, P.S.I.-Bhatt, in his deposition, Ex.23, categorically states that the F.I.R. Ex.24 was recorded by the Investigating Officer as given by him, which he had himself read and had signed thereafter. As against this, if the deposition of the Investigating Officer, P.I.-Salve, Ex.49, is seen, he says that the victim had himself given a written complaint. He consistently and persistently sticks to his version that a written complaint was given by the victim. Now, therefore, the F.I.R., Ex.24, is the F.I.R. which was recorded by the Investigating Officer, as given by the victim, as per the say of the victim, whereas, as per the say of the Investigating Officer, a written complaint was given to him. He does not specify in his deposition as to whether Ex.24 is the same F.I.R. The question, therefore, is where is the F.I.R. that the Investigating Officer says that he had received from the complainant in writing and,

if that be so, it becomes unanswered question mark as to why in presence of that F.I.R., a new F.I.R.-Ex.24 is produced and brought on record which, according to the complainant, is written by the Investigating Officer, as narrated by him. Under the circumstances, the very basis of the prosecution case, namely, the F.I.R., slips under a cloud of doubt.

9. Another aspect that requires consideration is that, as per the medical evidence and the depositions of the victim and the eye-witnesses, the victim had sustained two incise wounds, one on upper part of the sternum and second on the left arm about 5 cms. above the elbow. He sustained one C.L.W. on the little finger and an abrasion above the left wrist. The injuries are simple in nature. If the Panchnama of recovery of the cloth of the victim produced on record at Ex.50 is seen, it indicates that there were stray blood marks on bush-shirt of the victim on the right sleeve and front portion. As against this, if the Panchnama of arrest of the accused, Ex.27, is seen, it speaks of blood stains on rear side of his bush-shirt as well as front side of the bush-shirt. The trousers of the accused are also found to be stained with blood. If the shirt of the victim is found to be stained with stray blood marks even within the side of the injury, how is it that the cloth of the accused is found to be carrying blood stains on the front and the back particularly, when as per the medical evidence, the injuries are simple in nature are are only muscle deep. There is one more aspect that also requires to be kept in mind. According to the Panchnama, Ex.50, the shirt that the victim was wearing at the time of incident is recovered. That shirt is a full sleeved shirt and it is noted that it carries a cut mark on the right front side of the bush-shirt near the third button. It does not speak of any cut mark on the sleeve where the injured person sustained injuries. If this really was the shirt that was worn by the victim, naturally, a cut at that place, i.e. near the elbow, can be expected on that shirt. Thus, the prosecution story as emerging from depositions of the witnesses, including the victim, does not get any corroboration from this particular circumstance, namely, absence of a cut mark on the sleeve of the shirt claimed to have been worn by the victim at the time of the incident.

10. When so many defects and infirmities are found in the prosecution case where the victim and the witnesses as well as the accused person are all police personnel, when it is found that the relations between the accused and the victim were not cordial and the victim had

earlier made reports against the accused for departmental indiscipline, the Court has to satisfy itself fully about an independent, efficient and unbiased investigation. While viewing the above aspects, one more aspect that has been noticed by this Court is that, according to the medical evidence, none of the injuries were more than muscle deep and none of them were of a serious nature. They would not even fall in the definition of grevious hurt and still the accused is charge sheeted for offences under Sections 307 and 333 of Indian Penal Code.

11. The accused is also charged under Section 506(2) of Indian Penal Code. But barring the victim, no witness speaks of any intimidation coming from the accused person. If that be so, implicit faith cannot be placed on the witnesses examined by the prosecution who are all working in the same department and under the complainant. Their conduct at the time of the incident is also important. None of them claims to have rescued the victim. It is true that different persons react in different manner to a given incident. But when the witnesses belong to police department, they are expected to be trained to meet with such exigencies and their inaction on such occasion even raises doubt about their veracity. The sum total of the above discussion is that, it cannot be said that the view taken by the learned Additional Sessions Judge is wholly erroneous and palpably unsustainable nor can it be said that the reasons adopted by the learned Additional Sessions Judge and the conclusions arrived at by the learned Additional Sessions Judge are, in any manner, illegal, improper or incorrect.

12. In the result, the appeal must fail and is, therefore, dismissed. The bail bonds of the accused shall stand cancelled.

[J.N. BHATT, J.] [A.L. DAVE, J.]